THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26609 OF 2005

Dated: 24TH JANUARY, 2006.

Between:

Gyaneshwar Lal Agarwal .. Petitioner

And

A.P. State Financial Corporation .. Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26609 OF 2005

ORDER :

When the vacate petition filed by the respondent is listed for hearing, with the

consent of the learned Counsel for both the parties, the main writ petition itself is heard and decided.

It is not in dispute that the writ petitioner availed a term loan from the respondent – A.P. State Financial Corporation, Rangareddy (East) Branch by mortgaging the house property situated in Sy.No.71 of Gaganpahad, Old Kurnool Road, Kathedan, Hyderabad along with other properties of M/s. Prashant Synthetics Private Limited. It is also not in dispute that the petitioner committed default in repayment of the loan and therefore the plant and machinery as well as the finished products in M/s. Prashant Synthetics Private Limited were seized and subsequently the same were sold by way of auction. Since considerable amounts were still due, it appears that the petitioner made a proposal for closure of the term loan account under One Time Settlement (OTS) Scheme and having considered the same, the respondent Corporation approved to close the loan account of the petitioner on OTS basis by accepting a sum of Rs.27.91 lakhs payable in four equal monthly installments commencing from 15-12-2002 with future interest from 1-11-2002. The said decision was communicated to the petitioner by the respondent Corporation by letter dated 27-11-2002 in which it was made clear that if the crystallized amount was not paid as per the schedule specified thereunder, the relief granted under OTS shall be cancelled and the petitioner should be liable to pay the entire outstanding amounts in the loan account with further future interest.

The petitioner does not dispute the fact that except a sum of Rs.1 lakh which was already paid by the time of approval of OTS, the petitioner could not comply with the payment schedule as fixed under the OTS scheme. In the circumstances, when the respondent Corporation was taking steps to sell the mortgaged property situated in Sy.No.71 of Gaganpahad, Old Kurnool Road, Kathedan, Hyderabad, this writ petition is filed pleading that if the property is sold the petitioner stands to suffer irreparable loss and damage. The petitioner also states that he is ready to discharge the total loan liability within a period of four months and accordingly a Writ of Mandamus has been sought directing the respondent Corporation to grant further time for a period of four months for repayment of the loan in terms of OTS Scheme fixed under the proceedings dated 27-11-2002.

While directing Rule Nisi on 13-12-2005, this Court in W.P.M.P.No.34206 of 2005 directed the respondent not to take any coercive steps with regard to the house in question pending further orders subject to the condition that the petitioner deposits a sum of Rs.10 lakhs within three weeks, and another sum of Rs.10 lakhs within four weeks thereafter and a further sum of Rs.7 lakhs within four weeks thereafter and in default the direction shall stand vacated.

The petitioner contends that though the petitioner was ready to comply with the said direction and approached the Managing Director of the Corporation on 16-12-2005 with a demand draft for Rs.10 lakhs, the respondent Corporation did not accept the same.

Be that as it may, now that the main writ petition itself is being heard, the question is whether the petitioner is entitled to the relief as prayed for extension of time granted under the O.T.S. proceedings dated 27-11-2002.

On behalf of the respondent Corporation, Assistant General Manager, A.P. State Financial Corporation, Rangareddy (East) Branch filed a detailed counter-affidavit in which it is stated that in spite of several notices issued, the petitioner failed to comply with the time schedule prescribed under the O.T.S. Proceedings dated 27-11-2002. Hence, the respondent Corporation by letter dated 27-2-2004 duly cancelled the OTS package offered and further informed the petitioner and also the surety that the Corporation will proceed with recovery of dues by proceeding against the securities offered. The cancellation of OTS was preceded by the final notice dated 9-6-2003. Notwithstanding the same, the petitioner failed to respond. Thereafter, the collateral securities offered were put to sale by releasing the advertisements in the local dailies on various dates. Pursuant to the last advertisement, dated 27-10-2005, an offer was received for a sum of Rs.70.00 lakhs for purchase of land and buildings and the same was being finalized.

The averments in the counter-affidavit have not been contradicted by the petitioner by way of Reply affidavit nor any other material is placed before this Court to show

that OTS proceedings still continue to be in force.

The learned Counsel appearing for the respondent Corporation across the bar submits that subsequently the house in question was sold and a sale letter was also issued on 13-01-2006.

It is to be noted that One Time Settlement was already cancelled by the respondent Corporation on 27-2-2004. It is also clear from the counter-affidavit that before canceling the OTS, the petitioner was issued a notice and since there was no response, the Corporation having cancelled the OTS proceeded to sell the properties mortgaged by the petitioner. Since the OTS which was approved by proceedings dated 27-11-2002 stood cancelled long back on 27-2-2004 and the same has become final, the prayer in the writ petition seeking extension of time granted under the OTS proceedings dated 27-11-2002 is misconceived and cannot be granted.

Accordingly, the Writ Petition, which is devoid of merit, is dismissed. No costs.

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G. ROHINI, J.

Dt.24-01-2006.

GBS